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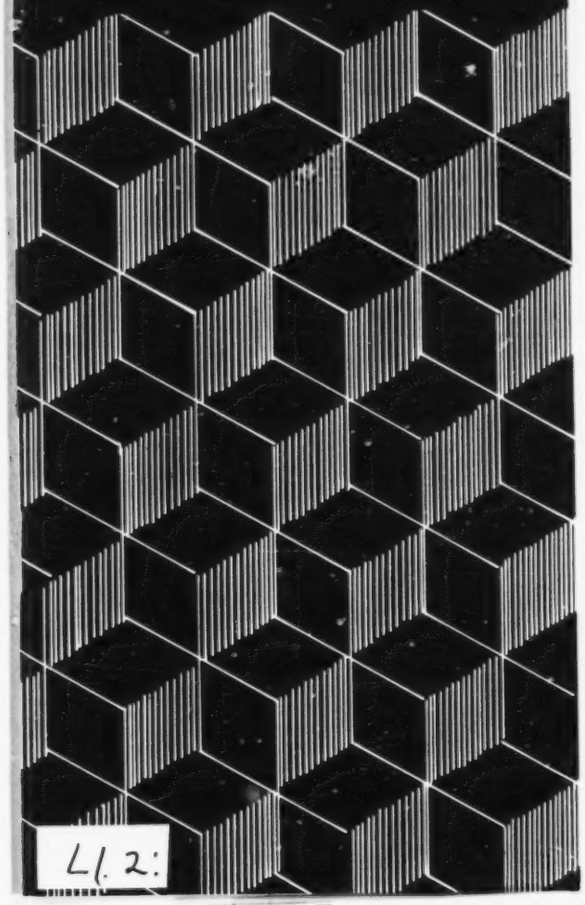
Bonding Requirements

Under the LMRDA
and the CSRA

U.S. Department of Labor
Office of Labor-Management Standards
1989



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Bonding Requirements

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and the CSRA

U.S. Department of Labor
Elizabeth Dole, Secretary

Office of Labor-Management Standards
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Foreword

Sec. 502 of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) and the regulations implementing sec. 7120 of title VII of the Civil Service Reform Act of 1978 (CSRA) establish bonding requirements for certain officers and employees of unions subject to the acts and of each trust in which a labor organization is interested (trust). The LMRDA covers private sector unions and unions composed of Postal Service employees. The CSRA covers unions representing employees in most agencies of the executive branch of the Federal Government, the Library of Congress, and the Government Printing Office. For more information concerning coverage of unions under the acts, see the pamphlet *Reports Required Under the LMRDA and the CSRA*.

This pamphlet is designed to assist those subject to the bonding requirements of the acts. It presents general information about the bonding provisions of the acts and the regulations implementing them and should not be construed as official interpretations of their provisions. The Department of Labor's official statement on LMRDA bonding requirements is 29 CFR 453, which is reprinted in the publication *LMRDA Regulations and Interpretative Bulletins*.

The Acts in General

What do the acts provide?

The LMRDA was enacted to provide for "the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations and for other purposes."

Among the other purposes for which the LMRDA was enacted is the protection of union treasuries from losses caused by the improper diversion of union funds. This protection rests on several provisions in the LMRDA which impose fiduciary responsibilities on union officers and other representatives, establish the Federal crime of embezzlement of union funds by a union officer or employee, and require union officers and employees to be bonded. The bonding requirement in sec. 502 of the LMRDA is the essential element in the protection of union funds because it insures that unions will be protected against losses caused by an act of fraud or dishonesty by a union officer or employee.

Sec. 7120 of the CSRA sets forth standards of conduct for unions which represent employees in most agencies of the executive branch of the Federal Government, the Library of Congress, and the Government Printing Office. This section provides for filing "financial and other reports" by unions, "bonding of (union) officials and employees," and complying "with trusteeship and election standards." The regulations implementing this section provide that officers and employees of such unions shall be bonded in accordance with the principles of sec. 502(a) of the LMRDA.

Therefore, the bonding requirements are essentially the same for unions subject to the LMRDA or the CSRA.

Appendix A is a bonding requirements checklist which can be used to determine whether a union or trust is in compliance with the bonding requirements.

Why is bonding required?

The bonding requirements of the LMRDA and the CSRA are not based on the idea that a particular individual or organization is dishonest or incompetent. Rather, they are based on the experience that when people are entrusted with the money or property of another, there will be an occasional instance when an individual will cause a loss either through fraud or dishonesty. Bonding is therefore required to protect or insure the union or trust against such a loss. The bonding requirements of the acts are intended to protect union members against losses occasioned by the fraud or dishonesty of officials or employees entrusted with the funds or other property of a union or trust.

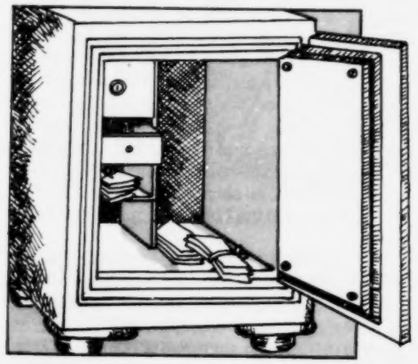
Some Important Definitions

What is *bonding?*

Bonding is an insurance agreement guaranteeing reimbursement for financial loss caused to another by the act or default of a third person. *Bonding* is commonly used to protect the financial operations of such institutions as business, government, industry, and unions. Like most insurance, the payment of premiums protects the institution's operations against loss. For purposes of the LMRDA and the CSRA, *bonding* is intended to protect unions and trusts from losses caused by acts of fraud or dishonesty by officers or employees.

What are *fraudulent* or *dishonest* acts?

Bond coverage required by the acts and the regulations is limited to protection against financial loss arising from *fraudulent* or *dishonest* acts in the handling of funds and other property of a union or trust. *Fraudulent or dishonest acts* include larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, and willful misapplication. Bonds must allow recovery for losses as a result of such acts by bonded persons directly or through connivance with others.



What is *handling?*

An individual is considered to be *handling* funds or other property of a union or trust and must be

appropriately bonded if his or her duties or activities are such that a risk of loss exists in the event of fraud or dishonesty by the individual, whether he or she acts alone or in collusion with others.

The term *handles funds* is not limited to physical contact with money but is based on various factors, such as custody, access, actual authority, powers, responsibilities, supervision, fiscal controls, and the nature of the funds or other property.

What are *funds* or *other property*?

Funds include, in addition to cash, items such as bank accounts, checks, bills and notes, government obligations, and marketable securities.

Other property includes property held, not for use, but for possible conversion into cash or for similar purposes making it substantially equivalent to *funds*. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures, and office and delivery equipment used in the operations of a union or a trust.

What is a *trust in which a labor organization is interested*?

A *trust in which a labor organization is interested* - i.e., a trust - is any trust or other fund or organization created or established by a union or which has one or more of its trustees or members of its governing body selected by a union, and which has as a primary purpose providing benefits for union members or their beneficiaries. This definition, for example, covers funds such as those for accident insurance, profit sharing, vacations, death benefits, apprenticeship and training, scholarships, child care, and legal services. Such types of funds must comply with the bonding requirements of the acts.

The definition of a trust also covers pension funds and health and welfare funds. However, if these funds are subject to the bonding provisions of the Employee Retirement Income Security Act of 1974 (ERISA), no additional bonding is required under the LMRDA or the CSRA.

The Scope of Bonding

What organizations are subject to bonding?

Every union covered by the LMRDA or title VII of the CSRA is subject to the bonding requirements of the acts except for unions whose property and annual receipts do not exceed $5,000 in value. Every trust is covered by the bonding requirements regardless of the value of its property and annual receipts.

Who must be bonded?

Every officer, agent, shop steward, and other representative and employee who handles funds or other property of a union which has property and annual receipts exceeding $5,000, or of a trust, is required to be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his or her part directly or through connivance with others.

This means that literally any person connected with a union or trust who handles funds or other property of the union or trust must be bonded. For example, the following persons, among others, must be bonded if they handle such funds or property:

- Elected union officers;
- Nonelected union officials;

- Key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority);
- Trustees and key administrative personnel of trusts;
- Salaried nonsupervisory professional staff of unions and trusts; and
- Stenographic, clerical, and service personnel of unions and trusts.

Persons who because of election, employment, or change in duties begin to handle funds or other property during a particular fiscal year must be bonded. Before such persons may be permitted to engage in any fund-handling activities, they must be bonded for an amount based upon the funds handled by their predecessors during the preceding fiscal year. No additional bonding is required if a bond which meets the requirements of the acts is already in force to cover such persons.

Officers, other officials, and employees of a union or a trust who are not bonded may not lawfully handle, receive, disburse, or exercise custody or control over funds or other property of the union or trust. Moreover, it is unlawful for any person with power to do so to delegate or assign the duties of handling, receiving, disbursing, or exercising custody or control over such funds or property to any person who is not bonded in accordance with the requirements of the acts.

Are there limits on the size of the bond?

Yes. The minimum bond must cover 10 percent of the funds handled by each official and his or her predecessor, if any, during the preceding fiscal year. If there was no preceding fiscal year, the bond must be at least $1,000 for a local union, and not less than $10,000 for other unions or for a trust.

The maximum bond required by law for any one person in any one union or trust is $500,000. However, a person who handles funds for more than one union or trust may be required to be bonded for up to $500,000 with respect to each union or trust.

If a union or trust chooses to have additional bonding coverage beyond the requirements of the

acts, the coverage may be placed with any legitimate company, including foreign companies, unincorporated companies, or companies which are set up by a union.

Appendix B is a worksheet which may be used to compute the amount of bond required for an officer or employee who handles the funds of a union or trust.

Is a specific form of bond required?

No. The bond may be either *individual, schedule,* or *blanket* in form.

An *individual bond* is a single bond which covers one named person for a designated amount.

A *schedule bond* covers either named individuals or specific positions or offices. Typically, a *name schedule bond* lists named individuals and covers them separately for a designated amount, while a *position schedule bond* lists specific positions, covers each for a designated amount, and covers any persons who may occupy any such position during the term of the bond.

A *blanket bond* covers all officers and employees of an insured union or trust, but without a schedule or list of those covered; all new officers and employees are covered automatically.

Acceptable *blanket bonds* may operate on either an aggregate or multiple penalty basis. A blanket bond on an aggregate penalty basis provides for recovering the same amount regardless of whether

a loss is caused by one person or by several persons acting together. For example, if a union or trust has a blanket bond for $10,000 on an aggregate penalty basis and two officers or employees are involved jointly in the embezzlement of $20,000, only $10,000 could be recovered from the surety company for the embezzlement.

A blanket bond on a multiple penalty basis provides separate coverage on each person. Thus, for example, if a union or trust has a blanket bond on a multiple penalty basis and two officers or employees are involved jointly in the embezzlement of $20,000, the full $20,000 could be recovered because $10,000 could be recovered for each individual.

May a bond cover more than one organization?

Yes. Neither act prohibits more than one union or trust from being named on a bond, or from being bonded together by the same bond, as long as the bond allows for recovery or enforcement by each union or trust named on the bond in an amount at least equal to that for which it would be covered on a separate bond.

May an existing bond be changed?

Yes. Neither act prohibits adding to or changing the terms of an existing bond through rider or amendment as long as they comply with applicable bonding requirements. Such a rider or amendment may be used to add to or change the scope or form of the bond, the persons or positions covered, or the amount of coverage.

Who may write the bond?

A bond may be written only by a bonding company which is a corporate surety holding a grant of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds. A list of approved companies is published annually in the *Federal Register,* usually in July, and additions, changes, and removals are published as they occur. A copy of the list may be obtained from the Department's Office of Labor-Management Standards (OLMS). When a company is removed from the approved list, a union or trust bonded by such company must secure a new bond from an approved company as soon as it learns of such removal.

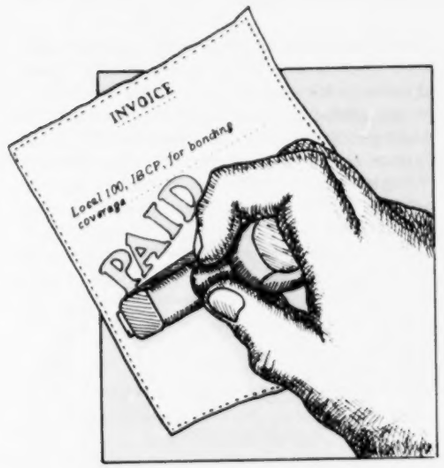
A bond may not be placed through any agent or broker or with any surety company in which *any* union or *any* officer, agent, shop steward, or other union representative has a direct or indirect interest. Thus, under the acts, Union A, for example, is prohibited from placing bonds through an agent or broker or with a surety company in which Union B or its officers or agents have more than a nominal interest.

A bond may not be obtained from a foreign surety company or from an unincorporated United States company unless an exemption has been obtained from the Secretary of Labor. The Secretary may exempt a union from placing a bond through a surety company holding a grant of authority from the Secretary of the Treasury if the union can establish that its alternate arrangements would provide the required protection at comparable cost or less.

Self-insurance, in whole or in part, fails to meet the bonding requirements of the acts. A union may not deposit its own funds with a surety to pay for losses or to compensate a surety for losses sustained under a bond.

Who pays for the bonding?

It varies. Bonding costs may be paid either by the bonded union or trust or by some other organization or person. The decision as to who pays the bonding costs is left to the discretion and agreement of the parties concerned in each case.



Disclosure of Bonding Information

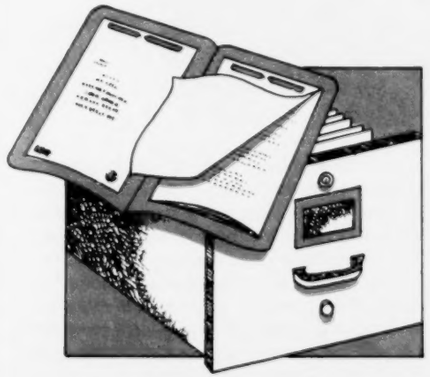
Is bonding information reported to the Department of Labor?

Yes. Unions subject to the LMRDA or the CSRA must indicate on their annual financial report (Form LM-2 or Form LM-3) filed with OLMS, whether they were insured by a fidelity bond during the annual reporting period and, if so, the maximum amount recoverable for loss caused by any person. They also must indicate whether they discovered any loss or shortage of funds or other property during the reporting period. If they did, they must describe the loss or shortage in detail by explaining what was lost, how it was lost, and to what extent, if any, there has been any recovery through restitution, surety bond, insurance, or other means.

For their part, all bonding and surety companies which have bonds in force under the LMRDA, the CSRA, or the ERISA must file an annual report (Form S-1) with OLMS to disclose their bonding experience during the year.

Are these reports made public?

Yes. All such reports are public information, and the Secretary of Labor may publish any information or data which he obtains from reports submitted under the reporting provisions of the acts.



Any person may examine or purchase copies of such reports. All reports are available at OLMS in Washington, D.C. Each OLMS field office has duplicate copies of all reports filed by unions within its geographic jurisdiction.

OLMS national and field offices will provide for:

- Inspecting reports on request;
- Furnishing copies of such reports, on request and on payment of service charges of 10 cents for each page; and
- Furnishing copies of reports and documents to State agencies without charge, on request of the Governor of the State.

The Secretary may use, for statistical and research purposes, any information and data included in the reports filed with him.

Enforcement

Are there penalties for violating the bonding requirements?

Yes. Willful violations of the bonding requirements of the LMRDA are punishable by fines of up $10,000, imprisonment for up to 1 year, or both.

Willful violations of the bonding requirements of the CSRA may result in administrative enforcement action and ultimately in a union's loss of dues withholding privileges or a withdrawal of its recognition as a collective bargaining representative.

In addition, officials who make false statements on reports required to be filed with OLMS, including statements relating to the bonding requirements of the acts, are subject to criminal penalties. If the report was submitted under the LMRDA, the penalty is a fine of up to $10,000, imprisonment for up

to 1 year, or both. If the report was submitted under the CSRA, the penalty, imposed under 18 U.S.C. 1001, is a fine of up to $10,000, imprisonment for up to 5 years, or both.

Additional Information

Additional information about the LMDRA, including copies of the Act, compliance assistance publications, and reporting forms, is available from any one of the OLMS field offices located in the following cities:

Albany, NY	Kansas City, MO
Atlanta, GA	Los Angeles, CA
Atlantic City, NJ	Miami, FL
Birmingham, AL	Milwaukee, WI
Boston, MA	Minneapolis, MN
Buffalo, NY	Nashville, TN
Chicago, IL	New Haven, CT
Cincinnati, OH	New Orleans, LA
Cleveland, OH	New York, NY
Dallas, TX	Philadelphia, PA
Denver, CO	Pittsburgh, PA
Detroit, MI	Saint Louis, MO
East Orange, NJ	San Diego, CA
Grand Rapids, MI	San Francisco, CA
Hato Rey, PR	Seattle, WA
Honolulu, HI	Tampa, FL
Houston, TX	Washington, DC

Consult your local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest OLMS field office.

Appendix A

Bonding Requirements Checklist

To comply with the bonding requirements of the LMRDA and the CSRA, a union whose property and annual receipts exceed $5,000 in value, or a trust, must be able to answer **yes** to each of the following questions:

Yes No

( ) ( ) Are *all* officers, agents, shop stewards, representatives, or employees who handle funds or other property of your union or trust bonded?

( ) ( ) Does the bond insure for losses caused by fraud or dishonesty on the part of each bonded person directly or through connivance with others?

( ) ( ) Does the bond provide for recovery or enforcement by the particular union or trust whose funds are covered?

Yes No

( ) ( ) If the bond covers more than one union or trust, is recovery against the surety provided for each to the same extent as would be provided if it were bonded separately?

( ) ( ) If your union or trust has a preceding fiscal year from which the amount of funds handled can be calculated, is the amount of the bond for each covered person at least 10 percent of the funds handled by that person? (The amount of the bond for any one person with any one organization is not required to be over $500,000, no matter what amount of funds that person handles.)

( ) ( ) Is the bond placed with a corporate surety company which is on the Secretary of the Treasury's list of acceptable sureties for Federal bonds?

( ) ( ) Is the bond placed with a corporate surety company in which no union and no officers, agents, shop stewards, or other representatives of any union have a direct or indirect interest, and with a broker or agent (if used) in which none of those officials have such an interest?

( ) ( ) Are all persons not covered by a bond meeting the requirements of the acts excluded from handling funds or other property of your union or trust?

Appendix B

Bonding Computation Worksheet

To determine the amount of funds handled during the last completed fiscal year and the amount of bonding required, complete the following bonding computation worksheet.

1. **Assets** as of (date) _____ start of fiscal year:

   A. Cash on hand ..... $ _____
   B. Cash in banks ..... _____
   C. Accounts receivable ..... _____
   D. Loans receivable ..... _____
   E. U.S. Treasury securities (market value) ..... _____
   F. Mortgage investments ..... _____
   G. Other investments, including real estate held for investment purposes (market value) ..... _____
   H. Other assets (airline deposits, etc.) ..... _____

   I. **Total Assets** (Total of Lines A through H) ..... _____

2. **Add: Receipts** during fiscal year ended (date) _____ ..... $ _____

3. **Total Assets Plus Receipts** (Line 1.I. plus Line 2) ..... $ _____

4. **Deduct: Receipts** included in Line 2 which resulted from converting into cash **Assets** held at the start of the fiscal year:

   A. Payments on accounts receivable . $ _____
   B. Repayments on loans receivable .. _____
   C. Sales of U.S. Treasury securities .. _____
   D. Payments on mortgage investments ..... _____
   E. Sales of other investments ..... _____
   F. Sales of other assets ..... _____
   G. Additional sales of securities ..... _____
   H. **Total Deductions** (Total of Lines A through G) ..... _____

5. **Total *Funds Handled* During Last Completed Fiscal Year** (Line 3 Minus Line 4) ..... $ _____

6. **Amount of *Bonding Required:***

A. For each person having access to receipts only (10 percent of Line 2) ..... $ _____

B. For each person having access to receipts and assets (10 percent of Line 5) ..... $ _____

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